

# KBR

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**Jeffrey B. King**  
Vice President Public Law

January 13, 2011

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: KBR, Inc. – Omission of Shareholder proposal Submitted by Mr. John Chevedden

Dear Ladies and Gentlemen:

On behalf of KBR, Inc., a Delaware corporation (the “Company” or “KBR”), pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), I am writing to inform you that KBR intends to omit from its proxy statement and form of proxy for its 2011 Annual Meeting of Stockholders (collectively, the “2011 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof received from John Chevedden (“Chevedden”).

Pursuant to Rule 14a-8(j), we have filed this notice with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2011 Proxy Materials with the Commission; and concurrently sent copies of this correspondence to Chevedden.

Rule 14a-8(k) provides that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform Chevedden that if he elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k).

The Proposal: The Proposal, addressed to the Chairman of the Board of the Company, requests that the Board of Directors “take steps necessary to reorganize the Board of Directors into one class with each director subject to election each year and to complete this transition within one-year.” A copy of the Proposal and the Supporting Statement is attached as Exhibit 1.

Basis for Exclusion: We intend to exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because Chevedden failed to establish the requisite eligibility to submit the Proposal, and failed to provide the requisite proof of stock ownership in response to the Company's proper request for that information.

On November 22, 2010, Chevedden submitted the Proposal for inclusion in KBR's upcoming proxy statement. See Exhibit 1. The Proposal was not accompanied by proof of ownership as required by Rule 14a-8(b). Rather, Chevedden attached a letter dated November 22, 2010 from RAM Trust Services ("RTS") that, in its entirety, states: "Ram Trust Services is a Maine chartered non-depository trust company. Through us, Mr. John Chevedden has continuously held no less than 200 shares of KBR, Inc. (KBR) common stock, CUSIP #48242W106, since at least November 7, 2009. We in turn hold those shares through The Northern Trust Company in an account under the name Ram Trust Services." See Exhibit 2 (the "RTS Letter"). This November 22, 2010 letter from RTS is the only purported "proof" of ownership Chevedden provided to KBR and, as of today, remains the only purported "proof" that he has provided. But RTS is not registered as a broker with the SEC, is not registered as a broker with the self-regulating industry organization FINRA, and is not registered as a broker with the self-regulating industry organization SIPC. Neither RTS nor Chevedden is listed in the Company's stock records as a record holder of any KBR common stock as is required by Rule 14a-8(b).

The Company sought additional verification of Chevedden's eligibility to submit the Proposal. On December 6, 2010, within 14 calendar days of the Company's receipt of the RTS Letter, the Company sent a letter addressed to Chevedden (the "Deficiency Notice"). See Exhibit 3. The Deficiency Notice informed Chevedden that he had failed to comply with the procedural requirements and explained how he could cure the procedural deficiency. In part, the Deficiency Notice states:

Based on our review of the information provided by you and of the relevant records and regulatory materials, we have been unable to conclude that the proposal meets the requirements for inclusion in the proxy, and unless you can demonstrate you meet these requirements in the proper time frame, we may seek to exclude your proposal from the 2011 proxy statement.

...

Pursuant to the SEC's Rule 14a-8(b), since neither you nor Ram Trust Services is a record owner of KBR common stock, nor from their letter does it appear that Ram Trust Services is a custodial institution, you must either:

- (1) Submit to KBR a written statement from the record holder of the securities (usually a broker or bank) that is a direct record holder of KBR

stock verifying that at the time the proposal was submitted you continuously held the requisite securities for at least one year; or

(2) If you have filed a Schedule 13D (17 C.F.R. § 240.13d-101), Schedule 13G (17 C.F.R. § 240.13d-102), Form 3 (17 C.F.R. § 249.103), Form 4 (17 C.F.R. § 249.104) and/or Form 5 (17 C.F.R. § 249.105), or amendments to those documents or updated forms, reflecting ownership of the shares as of or before the date on which the one-year eligibility period begins, you may demonstrate eligibility by submitting to the company: (A) a copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level; and (B) your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement.

Please note that to be considered a timely response under the SEC's Rule 14a-8(f), all of the documentation requested in this letter must be sent to my attention at the above address within 14 calendar days of the date you receive this request.

Chevedden responded on December 16, 2010 via electronic mail. *See Exhibit 4.* His response is copied below:

Mr. King, Thank you for acknowledging the rule 14a-8 proposal. Based on the October 1, 2008 Hain Celestial no-action decision, Ram Trust is my introducing securities intermediary and hence the owner of record for purposes of Rule 14a-8(b). Please let me know if there is a further question.

Sincerely,  
John Chevedden

- A. For the reasons stated below, the RAM Trust Services letter and Chevedden's December 16, 2010 response do not satisfy the requirements of Rule 14a-8(b)(2) and the Proposal is thus excludable pursuant to Rule 14a-8(f).

The Company believes that Chevedden's Proposal properly may be excluded from the Proxy Materials in accordance with Rules 14a-8 and 14a-8(f)(1) because Chevedden has failed to provide the Company, within the time period set forth in Rule 14a-8(f)(1), the requisite verification that Chevedden satisfies the eligibility requirements of Rule 14a-8(b). Rule 14a-8(b)(1) provides that in order to be eligible to submit the proposal, Chevedden must have continuously held at least \$2,000 in market value, or 1% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date on which the Proposal is submitted. Rule 14a-8(b)(2) provides that Chevedden, who is not a registered holder of the Company's securities, must prove his

eligibility at the time of his submission in one of two ways: by submitting a written statement from the record holder of the securities, or by submitting copies of Schedules 13D or 13G or a Form 3, 4 or 5.

In response to the RTS Letter, the Company's Deficiency Letter described the ownership requirements of Rule 14a-8, identified the deficiency in the RTS Letter, provided adequate detail about what Chevedden had to do to cure the deficiency, and explained that Chevedden's response must be postmarked or transmitted electronically no later than 14 days from the date of receipt of the Deficiency Letter.

The RTS Letter indicates that RAM Trust Services is a Maine chartered non-depository trust company and that Chevedden's shares are held by another entity, The Northern Trust Company in an account under the name Ram Trust Services. The RTS Letter itself shows that RTS does not hold custody of Chevedden's shares, either directly, as specified in Rule 14a-8(b)(2), or even through an affiliate. RAM Trust Services is not a record holder of the Company's securities.

Staff Legal Bulletin 14 states that a written statement establishing eligibility under Rule 14a-8(b) must be from the "record" holder and that a written statement from a shareholder's investment advisor is insufficient evidence of ownership unless the investment advisor is also the record holder of the shares. Chevedden should be well aware of the rule's unambiguous requirement that proponents have the burden of proof and must document proof of ownership by submitting the proof from a record holder, because Mr. Chevedden attempted to submit a similarly flawed shareholder proposal to the Apache Corporation just last year. The U.S. District Court ruled that Chevedden's proposal at issue in that case properly could be excluded because Chevedden failed to meet Rule 14a-8(b)(2)'s proof of ownership requirements.

In *Apache Corp. v. Chevedden*, 696 F.Supp.2d 723, 739 (S.D. Tex. 2010), the Honorable Lee H. Rosenthal of the United States District Court for the Southern District of Texas confirmed with respect to Rule 14a-8(b) that "The Rule requires shareholders to 'prove [their] eligibility.'" In the *Apache v. Chevedden* case, proponent Chevedden had submitted a purported shareholder proposal for inclusion in Apache's proxy statement. Apache filed suit in the U.S. District Court asserting that Chevedden failed to submit the requisite proof of ownership of Apache common stock as required by SEC Rule 14a-8(b), and Apache sought a declaratory judgment that Apache properly may exclude Chevedden's proposal from its proxy materials. On March 10, 2010, Judge Rosenthal granted Apache's motion for declaratory judgment, found that "Chevedden has failed to meet the Rule's [14a-8(b)(2)] requirements," and concluded that "Apache may exclude Chevedden's proposal from its proxy materials." 696 F.Supp.2d at 741. In her opinion, Judge Rosenthal explained that:

Although section 14 of the Securities Exchange Act of 1934 (governing proxies), under which Rule 14a-8 as promulgated, was intended to “give true vitality to the concept of corporate democracy,” *Medical Comm. for Human Rights v. SEC*, 432 F.2d 659, 676 (D.C. Cir. 1970), *cert. granted sub nom SEC v. Medical Comm. for Human Rights*, 401 U.S.973, 91 S. Ct. 1191 (1971), *vacated as moot*, 404 U.S. 403, 92 S. Ct. 577 (1972), that does not necessitate a complete surrender of a corporation’s rights during proxy season. Rule 14a-8 requires a shareholder seeking to participate to register as a shareholder or prove that he owns a sufficient amount of stock for a sufficient period to be eligible. Although this court concludes that Rule 14a-8(b)(2) is not as restrictive as Apache contends, on the present record, Chevedden has failed to meet the Rule’s requirements.

*Id.* The only timely purported “proof” of ownership Chevedden provided to the Company was a letter from RTS that is nearly identical in all material respects to the RTS letter at issue in *Apache v. Chevedden*. In that case, Judge Rosenthal considered the evidence regarding RTS’s purported status as an introducing broker in light of the publicly available information about RTS’s status as an investment advisor, and Judge Rosenthal explained that “The nature of RTS’s corporate structure, including whether RTS is or is not an ‘investment adviser’ is not determinative of eligibility. But the inconsistency between the publicly available information about RTS and the statement in the letter that RTS is a ‘broker’ underscores the inadequacy of the RTS letter, standing alone, to show Chevedden’s eligibility under Rule 14a-8(b)(2).” *Id.* at 740. Judge Rosenthal noted that “here, there are valid reasons to believe the letter is unreliable as evidence of the shareholder’s eligibility.” *Id.*


Judge Rosenthal’s ruling is consistent with previous no action relief the Staff has granted when a proponent attempted to establish proof of ownership by providing documentary evidence of ownership by a person other than the “record” holder. *See e.g. JP Morgan Chase & Co.* (Feb. 15, 2008); *Verizon Communications, Inc.* (Jan. 25, 2008); *The McGraw Hill Companies, Inc.* (Mar. 12, 2007); *MeadWestvaco Corporation* (Mar. 12, 2007). Because RAM Trust Services is not a record holder of Chevedden’s shares, Chevedden has failed to establish, within the 14 days prescribed by Rule 14a-8(f)(1), his eligibility to submit the Proposal.

Judge Rosenthal considered certain of the Staff’s no action letters, including *The Hain Celestial Group, Inc.* (Oct. 1, 2008), in which the Staff declined to allow the exclusion of a shareholder proposal under similar circumstances. The Staff repeatedly has acknowledged in its no-action letters that “a determination reached in such letters cannot adjudicate the merits of a company’s position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include a shareholder proposal in its proxy materials.” In light of this guidance, and in light of the U.S. District Court’s recent ruling in *Apache v. Chevedden* that a near-identical RTS



Letter submitted by Chevedden failed to meet Rule 14a-8(b)(2)'s proof of ownership requirements, the Company intends to exclude the Proposal from its proxy materials in reliance on Rule 14a-8(b) and 14a-8(f) unless a United States District Court rules that the Company is obligated to include the Proposal in its 2011 Proxy Materials. On January 13, 2011, the Company filed suit against Chevedden in the United States District Court for the Southern District of Texas seeking an appropriate declaration and other relief.

Sincerely,



Jeffrey B. King  
Vice President, Public Law

## Exhibit 1

JOHN CHEVEDDEN

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

Mr. William P. Utt  
Chairman of the Board  
KBR, Inc. (KBR)  
601 Jefferson St Ste 3400  
Houston TX 77002  
Phone: 713 753-2000

*b. Jeffrey King*

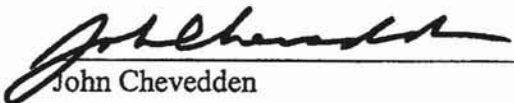
Dear Mr. Utt,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company. This proposal is submitted for the next annual shareholder meeting. Rule 14a-8 requirements are intended to be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

In the interest of company cost savings and improving the efficiency of the rule 14a-8 process please communicate via email to ~~to~~FISMA & OMB Memorandum M-07-16\*\*\*

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email to ~~to~~FISMA & OMB Memorandum M-07-16\*\*\*

Sincerely,

  
John Chevedden

November 22, 2010  
Date

cc: Jeffrey B. King <jeffrey.king@kbr.com>  
Corporate Secretary  
Fax: 713-753-5353, ~~713-753-3301~~  
Rob Kukla, Jr. <investors@kbr.com>  
Director of Investor Relations



[KBR: Rule 14a-8 Proposal, November 22, 2010]

**3\* – Elect Each Director Annually**

RESOLVED, shareholders ask that our Company take the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year and to complete this transition within one-year.

Arthur Levitt, former Chairman of the Securities and Exchange Commission said, "In my view it's best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them."

In 2010 over 70% of S&P 500 companies had annual election of directors. Shareholder resolutions on this topic won an average of 68%-support in 2009.

If our company took more than one-year to phase in this proposal it could create conflict among our directors. Directors with 3-year terms could be more casual because they would not stand for election immediately while directors with one-years terms would be under more immediate pressure. It could work out to the detriment of our company that our company's most qualified directors would promptly have one year-terms and that our company's least qualified directors would retain 3-year terms the longest.

The merit of this Elect Each Director Annually proposal should also be considered in the context of the need for improvement in our company's 2010 reported corporate governance status:

The Corporate Library [www.thecorporatelibrary.com](http://www.thecorporatelibrary.com), an independent investment research firm, rated our company "D," with "High Governance Risk," and "Very High Concern" for Executive Pay.

60% of the long-term equity award for our CEO William Utt consisted of cash-based performance awards, which did nothing to tie executive performance with long-term shareholder value. Furthermore, performance awards were based on only three-year performance periods and paid out on sub-median Total Shareholder Return performance relative to company peers – 50% payout for TSR at the 25th percentile.

There was \$652,000 of all other pay for our CEO in 2009 – including \$543,000 for a Supplemental Executive Retirement Plan (SERP). Also, Mr. Utt was potentially entitled to \$15 million cash severance and \$25 million total in the event of a change in control. Such practices were not reflective of executive pay that was well-aligned with shareholder interests.

Loren Carroll, chairman of our Executive Pay Committee, was on the boards of four companies rated "D" or lower by The Corporate Library. All four companies were "High Concern" regarding executive pay. The Corporate Library also flagged Mr. Carroll for his tenure on the Fleetwood Enterprises board as it slid into bankruptcy. Furthermore our Lead Director, Frank Blount, was flagged by for his tenure on the Entergy board as it went bankrupt. Messrs. Carroll and Blount were then allowed to hold 4 of the 9 seats on our most important board committees.

Plus one yes-vote from our 150 million shares was all it took to elect each of our directors for 3-year terms.

Please encourage our board to respond positively to this proposal to help turnaround the above type practices: **Elect Each Director Annually – Yes on 3.\***

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Notes:

John Chevedden,  
proposal.

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

sponsored this

Please note that the title of the proposal is part of the proposal.

\* Number to be assigned by the company.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

***We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.***

See also: Sun Microsystems, Inc. (July 21, 2005).

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

## Exhibit 2

# RAM TRUST SERVICES

November 22, 2010


John Chevedden

\*\*FISMA & OMB Memorandum M-07-16\*\*

To Whom It May Concern,

Ram Trust Services is a Maine chartered non-depository trust company. Through us, Mr. John Chevedden has continuously held no less than 200 shares of KBR, Inc. (KBR) common stock, CUSIP #48242W106, since at least November 17, 2009. We in turn hold those shares through The Northern Trust Company in an account under the name Ram Trust Services.

Sincerely,



Michael P. Wood  
Sr. Portfolio Manager

## Exhibit 3

# KBR

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601 Jefferson Street • Houston, Texas 77002-7900  
Phone: 713.753.4604 • Fax 713.753.3310

**Jeffrey B. King**  
**Vice President, Public Law and Secretary**

December 6, 2010

**Via Courier and E-mail**

John Chevedden

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

**Re: Director Election Resolution**

Dear Mr. Chevedden

On November 24, 2010, we received your letter signed as of November 22, 2010 KBR include your proposed resolution in its proxy solicitation for KBR's 2011 annual meeting. Based on our review of the information provided by you and of the relevant records and regulatory materials, we have been unable to conclude that the proposal meets the requirements for inclusion in the proxy, and unless you can demonstrate you meet these requirements in the proper time frame, we may seek to exclude your proposal from the 2010 proxy statement.

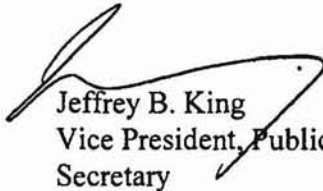
As you know, in order to be eligible to submit a proposal for consideration at KBR's 2011 annual meeting, Rule 14a-8 under Regulation 14A of the United States Securities and Exchange Commission ("SEC") requires that a stockholder must have continuously held at least \$ 2,000 in market value, or 1% of KBR's common stock (the class of securities that will be entitled to be voted on the proposal at the meeting) for at least one year by the date the proposal is submitted. The stockholder must continue to hold those securities through the date of the meeting and must so indicate to us. Your letter that "Rule 14a-8 requirements are intended to be met including the continuous ownership of the required stock value," however, the only information provided to us regarding your share ownership is letter from Ram Trust Services indicating that they hold 200 shares of KBR on your behalf and have done so since November 17, 2009. Pursuant to the SEC's Rule 14a-8(b), since neither you nor Ram Trust Services a record owner of KBR common stock, nor from their letter does it appear that Ram Trust Services is a custodial institution, you must either:

- (1) Submit to KBR a written statement from the record holder of the securities (usually a broker or bank) that is a direct record holder of KBR stock verifying that at the time the proposal was submitted you continuously held the requisite securities for at least one year; or
- (2) If you have filed a Schedule 13D (17 C.F.R. § 240.13d-101), Schedule 13G (17 C.F.R. § 240.13d-102), Form 3 (17 C.F.R. § 249.103), Form 4 (17 C.F.R. § 249.104) and/or Form 5 (17 C.F.R. § 249.105), or amendments to those documents or updated forms, reflecting ownership of the shares as of or before the date on which the one-year eligibility period begins, you may demonstrate eligibility by submitting to the company: (A) a copy of the schedule and/or form,

and any subsequent amendments reporting a change in your ownership level; and (B) your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement.

Please note that to be considered a timely response under the SEC's Rule 14a-8(f), all of the documentation requested in this letter must be sent to my attention at the above address within 14 calendar days of the date you receive this request. If you have any questions regarding the matters discussed in this letter, please feel free to call or write me at the number and address shown above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey B. King", is written over the typed name and title.

Jeffrey B. King  
Vice President, Public Law and  
Secretary



## Exhibit 4

**Jeff King**

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**From:** \*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

**Sent:** Thursday, December 16, 2010 11:18 PM

**To:** Jeff King

**Subject:** Rule 14a-8 Proposal (KBR) ,

Mr. King, Thank you for acknowledging the rule 14a-8 proposal. Based on the October 1, 2008 Hain Celestial no-action decision, Ram Trust is my introducing securities intermediary and hence the owner of record for purposes of Rule 14a-8(b). Please let me know if there is a further question.

Sincerely,  
John Chevedden